

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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| <b>In re:</b><br><br><b>W.R. GRACE &amp; CO., <i>et al.</i>,</b><br><br><b>Debtors.</b> | <b>§</b><br><b>§</b><br><b>§</b><br><b>§</b><br><b>§</b><br><b>§</b> | <b>Chapter 11</b><br><br><b>Jointly Administered</b><br><b>Case No. 01-01139 (KJC)</b> |
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**FEE AUDITOR'S FINAL REPORT REGARDING THE THIRTY-THIRD  
QUARTERLY FEE APPLICATION OF BAKER, DONELSON,  
BEARMAN, CALDWELL & BERKOWITZ, P.C., FOR THE  
PERIOD OF JULY 1, 2012, THROUGH SEPTEMBER 30, 2012**

This is the final report of Warren H. Smith & Associates, P.C., acting in its capacity as fee auditor in the above-captioned bankruptcy proceedings, regarding the Thirty-Third<sup>1</sup> Quarterly Fee Application of Baker Donelson Bearman Caldwell & Berkowitz, P.C., for the Period of July 1, 2012, through September 30, 2012 (the "Application").

**BACKGROUND**

1. Baker Donelson Bearman Caldwell & Berkowitz, P. C. ("Baker Donelson"), was retained as advisor for legislative affairs to the Debtors. In the Application, Baker Donelson seeks approval of fees totaling \$90,000.00 and expenses totaling \$14,314.50 for its services from July 1, 2012, through September 30, 2012 (the "Application Period").

2. In conducting this audit and reaching the conclusions and recommendations contained herein, we reviewed in detail the Application in its entirety, including each of the time and expense entries included in the exhibits to the Application, for compliance with 11 U.S.C. § 330, Local Rule

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<sup>1</sup>Although this is Baker Donelson's thirty-third quarterly fee application in the case, it covers the period of July 1, 2012, through September 30, 2012, which is the Forty-Sixth Interim Application Period.

2016-2 of the Local Rules of the United States Bankruptcy Court for the District of Delaware, Amended Effective February 1, 2013, and the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330, Issued January 30, 1996 (the "U.S. Trustee Guidelines"), as well as for consistency with precedent established in the United States Bankruptcy Court for the District of Delaware, the United States District Court for the District of Delaware, and the Third Circuit Court of Appeals. We served an initial report on Baker Donelson based upon our review, and we received a response from Baker Donelson, portions of which response are quoted herein.

## **DISCUSSION**

### General Issues

3. We note that on April 17, 2013, the Court entered an order authorizing the Debtors to increase Baker Donelson's monthly fixed fees for Legislative Affairs Services to \$30,000.00, *nunc pro tunc* to May 1, 2012, and clarifying that Baker Donelson's fees for Legislative Affairs Services are to be evaluated under the standard set forth in Bankruptcy Code section 328(a).<sup>2, 3</sup> We note that, in light of the Court's order of April 17, 2013, Baker Donelson's requested compensation of \$90,000.00 for Legislative Affairs Services does not exceed the amount which it is authorized to receive, and thus we have no objection to Baker Donelson's fees on that basis.

4. We note that Baker Donelson lists 67.00 hours worked on the case during the Application Period, which computes to an effective hourly rate of \$1,343.28.

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<sup>2</sup>See Order Approving Baker Donelson's Monthly Fee Retainer, Clarifying that Section 328(A) Provides the Appropriate Standard of Review for the Retainer and Expanding the Scope of Certain Legislative Affairs Services Nunc Pro Tunc to May 1, 2012 (Docket No. 30523), at ¶¶4 and 6.

<sup>3</sup>The order also provides, however, that the United States Trustee retains the right to review Baker Donelson's fees and expenses pursuant to section 330(a) of the Bankruptcy Code.

Specific Expense Entries

5. In our initial report, we noted the following air fare charge for which more information was needed:

|   |          |           |
|---|----------|-----------|
| Airfare to/from Germany for client meetings | 07/31/12 | 13,099.80 |
|---|----------|-----------|

In response to our request, Baker Donelson provided the following information:

Baker Donelson confirms that the above-referenced expense was correctly billed to the W.R. Grace case.

At the request of Mr. Festa, CEO of W.R. Grace & Co., and Mr. LaForce, CFO of W.R. Grace & Co., Mr. Corcoran traveled with Mr. LaForce to Belgium on July 31, 2012, where they met Mr. Festa for meetings with United States government officials and European banking officials to assess the potential impact on W.R. Grace & Co. of the European currency crisis. Mr. Corcoran traveled on the same class of airfare with Mr. LaForce for preparation for the meetings.

|            |  |
|------------|--|
| 07/31/2012 | First Class Airfare on United Airlines Flight 950 from Washington (Dulles) DC at 5:49 p.m. arriving in Brussels, Belgium at 7:15 a.m. on August 1, 2012. |
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|            |  |
|------------|--|
| 08/03/2012 | First Class Airfare on United Airlines Flight 8723 from Berlin, Germany to Frankfurt, Germany. |
|------------|--|

|  |   |
|--|---|
|  | First Class Airfare on United Airlines Flight 933 from Frankfurt, Germany to Washington (Dulles) DC. <sup>4</sup> |
|--|---|

Paragraph II.E.1. of the U.S. Trustee Guidelines provides in part: “Factors relevant to a determination that the expense is proper include the following: 1. Whether the expense is reasonable and economical. For example, first class and other luxurious travel mode or accommodations will normally be objectionable.” Although it may have been more convenient for Mr. Corcoran to fly first class in this

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<sup>4</sup>Baker Donelson also provided supporting documentation for this expense. See Response Exhibit 1.

instance, we do not believe the applicant has demonstrated that it was *necessary* for Mr. Corcoran to fly first class. In previous cases, this Court has approved business class air fares for overseas flights. Based on our research of these fares on the United Airlines website, the cost of business class fares for the flights from Washington (Dulles) to Brussels and from Frankfurt back to Washington (Dulles), as well as a flexible economy fare for the 90-minute flight from Berlin to Frankfurt, would total \$12,724.00.<sup>5</sup> Therefore, we recommend that reimbursement of this expense be reduced to \$12,724.00, for a reduction of \$375.80 in expenses.

6. We noted the following lodging charge for which more information was needed:

\$699.06      07/31-03/03/2012      Lodging - client meetings in Brussels and Berlin

In response to our request, Baker Donelson provided the following information concerning this expense: Baker Donelson confirms that the above-referenced expenses were correctly billed to the W.R. Grace case.

At the request of Mr. Festa, CEO of W.R. Grace & Co., and Mr. LaForce, CFO of W.R. Grace & Co., Mr. Corcoran traveled with Mr. LaForce to Belgium on July 31, 2012, where they met Mr. Festa for meetings with United States government officials and European banking officials to assess the potential impact on W.R. Grace & Co. of the European currency crisis.

Lodging:

\$390.29      08/01/2012      1-night stay at the Renaissance Brussels Hotel in Brussels, (€298.11 Room, €17.89 Tax) Belgium following meetings with the Commercial Attaché at the U.S. Embassy and with W.R. Grace consultants at APCO, departing on August 2, 2012.

\$308.77      08/02/2012      1-night stay at the Hotel Adlon Kempinski in

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<sup>5</sup>According to the United Airlines website, a “United Business First” fare for Flight 950 from Washington (Dulles) to Brussels would be \$6,732.00. (United is not currently selling regular business class fares for this particular flight.) A flexible economy fare for the Berlin to Frankfurt flight costs \$570.00. And a business class fare for the flight from Frankfurt to Washington (Dulles) costs \$5,422.00.

Berlin, (€233.64 Room, € 16.36 Tax) Germany following meetings with the Commercial staff at the U.S. Embassy and with officials of Deutsche Bank, departing on August 3, 2012.

We do not consider the Renaissance Brussels Hotel to be a luxury hotel because it is rated four stars on the Expedia travel website. Therefore, even though the nightly room rate of €298.11 (\$368.20) seems high, we have no objection to this expense. We consider the Adlon Kempinski to be a luxury hotel because it is rated five stars on the Expedia travel website. In order to determine a reasonable nightly “trigger” rate for this particular area of Berlin, we compared the nightly room rate at the Kempinski (€233.64 or \$288.57) to the nightly room rates of the following hotels in the Mitte, Berlin area which, if located in the United States, we would consider to be upscale business hotels, but not luxury hotels:

|                                |         |
|--------------------------------|---------|
| Radisson Blu Hotel (5 stars)   | €199.00 |
| Westin Grand Hotel (4 ½ stars) | €250.00 |
| Hilton Hotel (5 stars)         | €238.00 |
| Berlin Marriott (4 stars)      | €209.00 |

Based upon this comparison, it appears to us that the nightly room rate of €233.64 incurred by Mr. Corcoran at the Kempinski is not out of line with what one could expect to pay for a room at an upscale business hotel in the Mitte, Berlin area. Thus, we have no objection to this expense.

7. We noted photocopy charges of \$35.20 in the August 2012 monthly fee application. The Delaware Local Rules limit photocopying charges to 10¢ per page. We asked Baker Donelson about its photocopy charges, and it responded: “Baker Donelson’s standard rate for photocopying charges is 20¢ per page. Baker Donelson inadvertently charged \$35.20 for 176 photocopies. The correct amount should be \$17.60.” We appreciate Baker Donelson’s response and recommend a reduction of \$17.60 in expenses.

### CONCLUSION

8. Thus, we recommend approval of \$90,000.00 in fees and \$13,921.10 in expenses (\$14,314.50 minus \$393.40) for Baker Donelson's services for the Application Period.

Respectfully submitted,

**WARREN H. SMITH & ASSOCIATES, P.C.**

By: \_\_\_\_\_



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**FEE AUDITOR**

### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served by First Class United States mail to the attached service list on this 11<sup>th</sup> day of November, 2013.



Warren H. Smith

## **SERVICE LIST**

### **Notice Parties**

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